

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	:	
	:	
Petition for expedited approval of implementation of a	:	No. 00-0259
market-based alternative tariff, to become effective on	:	
or before May 1, 2000, pursuant to Article IX and Sec-	:	
tion 16-112 of the Public Utilities Act.	:	
 CENTRAL ILLINOIS PUBLIC SERVICE COMPANY	:	
UNION ELECTRIC COMPANY	:	
	:	No. 00-0395
Petition for approval of revisions to market value	:	
tariff, Rider MV.	:	
 ILLINOIS POWER COMPANY	:	
	:	
Petition for Alternative Approval of Implementation :	:	No. 00-0461
of a Market-Based Tariff to Become Effective on or :	:	
before January 1, 2001, pursuant to Article IX and	:	
Section 16-112 of the Public Utilities Act.	:	

MEMORANDUM IN SUPPORT OF MOTION TO
STAY PROCEEDINGS OF THE COMMISSION

On June 26, 2000, the Illinois Industrial Energy Consumer (IIEC) companies in Commonwealth Edison Company (“ComEd”) Docket 00-0259 filed a Notice of Appeal with the Clerk of the Illinois Commerce Commission (“Commission”) and a Notice of Filing of Notice of Appeal and Petition for Review of the Docket 00-0259 Order with the Commission and the Clerk of the Appellate Court for the Fourth Illinois Appellate District. The subject of the appeal was the Commission’s Order of April 27, 2000 in Docket 00-0259, wherein the Commission approved an alternative methodology for the determination of market value under Section 16-112 of the Public Utilities Act (“Act”) (220 ILCS 5/16-112).

On July 6, 2000, the Commission, on its own motion, entered an order consolidating ComEd Docket 00-0259 with Illinois Power Company (“IP”) Docket 00-0461 and Central Illinois Public Service Company and Union Electric Company (“Ameren”) Docket 00-0395. The IP and Ameren Dockets were initiated for the purpose of reviewing methods proposed by IP and Ameren for determining market value under Section 16-112 of the Act. The IP and Ameren cases are to be the subject of formal evidentiary hearings before the Commission.

The Commission was deprived of its jurisdiction over the subject matter of Docket 00-0259 upon the filing of the Notice of Appeal, Notice of Filing of Notice of Appeal and Petition for Review with the Clerk of the Commission and the Clerk of the Appellate Court for the Fourth Appellate District. Therefore, the Commission is without jurisdiction to consolidate ComEd Docket 00-0259 with the IP and Ameren, dockets for the purpose of further addressing the subject matter of, and the issues in, ComEd Docket 00-0259.

The Commission loses jurisdiction upon the filing of the Notice of Appeal and Notice of Filing of Notice of Appeal described in Section 10-201 of the Public Utilities Act which specifically provides:

“The court first acquiring jurisdiction of any appeal from any rule, regulation, order or decision shall have and retain jurisdiction of such appeal ... until such appeal is disposed of in such appellate court.”
(emphasis supplied) (220 ILCS 10-201(a))

The Act further provides that upon the filing of the Notice of Appeal and the Notice of Filing of Notice of Appeal with the Clerk of the Appellate Court “...the appellate court shall have jurisdiction over the appeal.” (220 ILCS 10-201(b)). The appeal is to be heard according to the rules governing other civil court cases to the extent they are applicable. (220 ILCS 5/10-201(b)). Finally, the Act prohibits the introduction of new or additional evidence in any proceeding upon appeal from

an Order or decision of the Commission but requires the appeal to be heard upon the record before the Commission. (220 ILCS 5/10-201(d)).

The timely filing of a Notice of Appeal from an order or decision of the Commission is the only jurisdictional step required under the statutory process described above. Moncada, et. al., v. Illinois Commerce Commission, et. al., 212 Ill.App.3d 1046, 156 Ill.Dec. 1024, 571 N.E.2d 1004, 1008 (Ill. App.Ct. 1991); Illinois Telephone Association v. Illinois Commerce Commission, 57 Ill.App.3d 968; 15 Ill.Dec. 330, 373 N.E.2d 676, 678-679 (Ill. App.Ct. 1978). The Commission may not abort or frustrate such an appeal. Illinois Telephone Association v. Illinois Commerce Commission, at 679. State Public Utilities Commission v. City of DeKalb 283 Ill. 443; 119 N.E. 423, 425 (Ill. 1918).¹

Ordinarily, in civil cases involving appeals from trial courts to an appellate court, once a Notice of Appeal is filed, the trial court is divested of jurisdiction to enter any order involving matters of substance. People v. Scott, 77 Ill.App.3d 1003, 396 N.E.2d 1287 (Ill. App.Ct. 1979); King City Federal Savings & Loan Association v. Ison, 80 Ill.App.3d 900, 400 N.E.2d 562 (Ill. App.Ct. 1980). The trial court retains only that jurisdiction necessary to hear and determine matters arising independent of and unrelated to that portion of the proceeding that pends on appeal. Cygnar v. Martin-Trigona, 26 Ill.App.3d 291, 325 N.E.2d 76 (Ill. App.Ct. 1975).

In summary, the statutory procedure for appeals of Commission orders and decisions clearly provides the Appellate Court is vested with jurisdiction upon the filing of the Notice of Appeal, as

¹In the Illinois Telephone Association case referenced above, the Commission contended an appeal could be aborted by the Commission's determination not to file the record on appeal. The appellate court stated the legislature did not intend to provide the Commission with "... so simple of device to frustrate appeals..." 373 N.E.2d, at 679. In the City of DeKalb case, the Illinois Supreme Court affirmed an order of a lower court, which had reviewed a Commission decision, holding the Commission, through its Chairman, in contempt for failure to file a transcript of the proceedings before the Commission with the reviewing court. See, generally, DeKalb, at 425.

provided in Section 10-201 of the Act. The procedure requires that the appeal be heard in accordance with rules applicable to other civil appeals. Other cases involving appeals from Commission decisions provide the filing of the Notice of Appeal is jurisdictional and the Commission may not frustrate or abort the appellate process by subsequent orders or actions. Once the appeal is filed, the Commission, as is a trial court, is deprived of jurisdiction over substantive issues in the case.

Under these circumstances, consolidation of ComEd Docket 00-0259 with IP Docket 00-0461 and Ameren Docket 00-0395 for the purpose of further considering the substantive issues raised in Docket 00-0259 is clearly inappropriate. The Commission may not further consider the substantive issues raised in Docket 00-0259 pending resolution of the appeal filed from the Commission's Order in Docket 00-0259.

DATED this 25th day of July, 2000.

Respectfully submitted,

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ATTORNEYS FOR THE ILLINOIS INDUSTRIAL
ENERGY CONSUMERS (IIEC)

27078.1

ATTACHMENT A

COMMONWEALTH EDISON COMPANY;
ENRON ENERGY SERVICES;
PEOPLES ENERGY SERVICES, INC;
NICOR ENERGY L.L.C;
NEW ENERGY MIDWEST L.L.C;
MIDWEST INDEPENDENT POWER PRODUCERS COORDINATION GROUP;
CENTRAL ILLINOIS LIGHT COMPANY;
ILLINOIS POWER COMPANY;
THE ATTORNEY GENERAL OF THE STATE OF ILLINOIS ON BEHALF OF THE PEOPLE
OF THE STATE OF ILLINOIS;
SIEBEN ENERGY ASSOCIATES;
CMS MARKETING SERVICES AND TRADING;
MID-AMERICAN ENERGY COMPANY;
CENTRAL ILLINOIS PUBLIC SERVICE COMPANY;
UNION ELECTRIC COMPANY;
THE PEOPLE OF COOK COUNTY;
UNICOM ENERGY, INC.,
CITY OF CHICAGO; and
CITIZENS UTILITY BOARD.